

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JAN 10 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of

**Implementation of the Local Competition
Provisions in the Telecommunications
Act of 1996**

CC Docket No. 96-98

**Interconnection between Local Exchange
Carriers and Commercial Mobile
Radio Service Providers**

CC Docket No. 95-185

**OPPOSITION OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to Public Notice DA 96-2179 (released December 23, 1996), hereby submits its Opposition to the Petition for Waiver filed by U S West Communications, Inc. ("U S West"), in the above-captioned docket on December 11, 1996 (the "Waiver Petition").

¹ TRA is an association comprised of more than 500 telecommunications resale carriers and their underlying product and service providers engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and internet services. TRA's resale carrier members will also be among the many new market entrants that will soon be offering local exchange telecommunications services, generally through traditional "total service" resale of incumbent local exchange carrier ("ILEC") or competitive local exchange carrier ("CLEC") retail service offerings or by recombining unbundled network elements obtained from ILECs to create "virtual local exchange networks."

I.

INTRODUCTION

As the Commission concluded in the Local Competition First Report and Order, access to operational support systems ("OSS") is essential for the development of meaningful local competition.² Any impairment of access to OSS equivalent in all material respects to the internal OSS functions utilized by incumbent local exchange carriers ("ILECs") will not merely hinder the ability of requesting telecommunications carriers to compete, it will, in TRA's opinion, render such competition a virtual impossibility. The OSS access requirements imposed in the Local Competition First Report and Order, accordingly, should be relaxed only upon a compelling showing of good cause. Here, the "good cause" showings made in U S West's Waiver Petition have already been presented to the Commission in petitions for reconsideration of the Local Competition First Report and Order brought by Sprint Corp. ("Sprint") and the Local Exchange Carrier Coalition ("LECC"), and rejected in its Local Competition Second Order on Reconsideration.³ TRA strongly urges the Commission that the same result is warranted with respect to U S West's Waiver Petition.

² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶¶ 315 - 316, 516 - 528, 970 - 971 (released August 8, 1996), *pet. for rev. pending sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. Sept. 5, 1996), *recon.* FCC 96-394 (Sept. 27, 1996), *further recon.* FCC 96-476 (Dec. 13, 1996) ("Local Competition First Report and Order").

³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-476 (Dec. 13, 1996) ("Local Competition Second Order on Reconsideration").

As its Waiver Petition acknowledges,⁴ U S West's inability to meet the January 1, 1997, deadline of the Local Competition First Report and Order results at least in part from U S West's failure to dedicate sufficient personnel resources toward fulfilling its obligations pursuant to Section 251 of the Telecommunications Act of 1996 (the "1996 Act").⁵ TRA urges the Commission that, under these circumstances, only the most concerted action on U S West's part to make OSS functions available to requesting carriers as soon as possible should constitute a good faith attempt at compliance. So important is the availability of OSS to the advancement of competition, and so great is an incumbent LEC's incentive to maintain the fullest possible competitive advantage for the longest possible period of time, that TRA urges the Commission to carefully examine the *bona fides* of U S West's compliance efforts.

The Commission has indicated that it would not preclude initiating actions to enforce its OSS access requirements where circumstances warrant. TRA urges the Commission that this situation presents an appropriate vehicle by which the Commission may clearly demonstrate its commitment to the principles embodied in Section 251. By imposing sanctions upon U S West should it fail to pursue with all due diligence the satisfaction of its obligations to make OSS available to all requesting telecommunications carriers as soon as possible, the Commission will provide continuing incentive for ILECs to fulfill their OSS access obligations in a timely fashion. The Commission will also simultaneously confirm for those ILECs which have attempted to meet the January 1, 1997, deadline the wisdom and value associated with the decision to attempt a best efforts compliance even in the face of operational difficulties similar to those experienced by U S West.

⁴ U S West Waiver Petition at 4.

⁵ Pub. L. No. 104-104, 100 Stat. 56, §251; 47 U.S.C. §251.

II.

ARGUMENT

In the Local Competition First Report and Order, the Commission "conclude[d] that providing nondiscriminatory access to operations support systems functions is technically feasible."⁶ Recognizing that "[m]uch of the information maintained in these systems is critical to the ability of other carriers to compete with incumbent LECs using unbundled network elements or resold services,"⁷ the Commission imposed upon ILECs the obligation to "provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself."⁸ While it noted that "even the largest and most advanced incumbent LECs have not completed interfaces that provide such access to all of their support functions," the Commission nonetheless specified that "[i]ncumbent LECs that do not currently comply with this requirement of Section 251(c)(3) must do so as expeditiously as possible, *but in any event no later than January 1, 1997.*"⁹

In its Waiver Petition, U S West seeks relief from the January 1, 1997, deadline with respect to design services including, but not limited to "CENTREX services, point-to-point private lines, multi-point private lines, foreign exchange circuits, DS0, DS1, and higher rates, T-1, SONET, PBX, PRI ISDN, and WATS services."¹⁰ Additionally, citing a "lack of clarity" concerning its obligation to provide "OSS access in support of provisioning, maintenance, and

⁶ Local Competition First Report and Order, FCC 96-325, at ¶520.

⁷ Id. at ¶518.

⁸ Id. at ¶523.

⁹ Id. at ¶¶524, 525.

¹⁰ U S West Waiver Petition at fn.3.

billing of unbundled network elements,"¹¹ U S West seeks a waiver with respect to this obligation as well.

In TRA's opinion, the OSS obligation of the Local Competition First Report and Order is not ambiguous; the Local Competition Second Order on Reconsideration, however, resolves U S West's perceived ambiguity quandary. In that Order, the Commission specifically noted that "several *ex parte* presentations made by incumbent LECs sought clarification of their obligations to provide access to OSS functions,"¹² including U S West's letter of October 7, 1996.¹³ The Commission then proceeded to reaffirm its decision that "incumbent LECs must have made modifications to their OSS necessary to provide access to OSS functions by January 1, 1997."¹⁴

TRA notes that the design services for which U S West has been unable to implement OSS access functionalities are all services which competing telecommunications carriers will find it highly desirable to offer to their customers. Indeed, access to these design services will be absolutely essential for the continued operations of many business customers. Inasmuch as it will continue to offer these premium services to its own customers, every day U S West delays the availability of "information regarding interface design specifications" -- information found by the Commission to be "critical to enable competing carriers to modify their existing systems and procedures or develop new systems to use these interfaces to obtain access

¹¹ Id. at fnnt.4.

¹² Local Competition Second Order on Reconsideration, FCC 96-476 at ¶2.

¹³ U S West Waiver Petition at fnnt.8.

¹⁴ Local Competition Second Order on Reconsideration, FCC 96-476 at ¶7.

to the incumbent LEC's OSS functions"¹⁵ -- it will be securing to itself a highly effective competitive advantage. Clearly, this is not an example of U S West "provid[ing] an efficient competitor with a meaningful opportunity to compete. . . a necessary precondition to obtaining the benefits that the opening of local exchange markets to competition is designed to achieve."¹⁶

Indeed, this type of incumbent foot-dragging illustrates the precise dangers the Commission has taken great pains to guard against. In addressing the potential operational barriers confronting new resale entrants, the FCC has clearly acknowledged the adverse competitive impact of inferior access to operations support functions as follows:

[I]f competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged.¹⁷

Accordingly, the Commission has held that "operations support systems and the information they contain fall squarely within the definition of 'network element' . . . inclusion of these terms in the definition of 'network element' is a recognition that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry."¹⁸ It is not surprising, then, given the Commission's commitment to fostering the development of local competition, that the Local Competition Second Order on Reconsideration held LECC's "assert[ion] that the January 1, 1997 date 'cannot realistically be

¹⁵ Id. at ¶8.

¹⁶ Local Competition First Report and Order, FCC 96-325, at ¶315.

¹⁷ Id. at ¶518.

¹⁸ Id. at ¶516.

met by all carriers for all support systems" insufficient to warrant modification of the deadline. "Under our rules," stated the Commission, "incumbent LECs must have made modifications to their OSS necessary to provide access to OSS functions by January 1, 1997."¹⁹ TRA submits a similar conclusion would be appropriate here.

U S West expects electronic support for design services will not be available for another half year.²⁰ Even with respect to "Plain Old Telephone Service," U S West is not in a position to provide pre-ordering and ordering electronic access, but believes itself to be in substantial compliance with the Commission's directives. The obstacles which U S West identifies as hindering its ability to comply with the January 1, 1997, deadline, however fall, with few or no exceptions, within the range of ordinary events which U S West must surely encounter as part of its day-to-day operations. This is certainly not the first time U S West has been faced with the development of complex systems; nor can it be U S West's first encounter with entities which change their minds as to "what their 'actual' requirements really are", or the first instance in which U S West "cannot meet the desired requirements in the manner originally anticipated."²¹ And, given that U S West's personnel and resources dwarf the capabilities of even its largest competitors, TRA is not altogether sympathetic to U S West's defense that a good measure of its inability to comply with the January 1, 1997, deadline results from the fact that "some of the same personnel and resources are also involved in working on" other operations system changes as well.²²

¹⁹ Local Competition Second Order on Reconsideration, FCC 96-476 at ¶7.

²⁰ U S West Waiver Petition at 5.

²¹ Id. at 4-5.

²² Id. at 4.

TRA is not oblivious to the magnitude of the task the Commission has directed ILECs to accomplish. Neither has the Commission been unmindful of the effort involved. However, in the Local Competition Second Order on Reconsideration, the Commission noted "[w]e are encouraged by reports that this progress [that has been made by several incumbent LECs toward meeting their obligation to provide nondiscriminatory access to OSS functions to requesting carriers] has continued since the release of our Order. . . [W]e find no basis in the record for postponing the date by which access to OSS must be offered."²³

The Commission has indicated that it "do[es] not anticipate initiating enforcement action against incumbent LECS that are making good faith efforts to provide [OSS] access within a reasonable period of time, pursuant to an implementation schedule approved by the relevant state commission."²⁴ TRA submits that U S West's actions here do not clearly demonstrate a good faith attempt at comply with its OSS obligations. Informing the Commission of an inability to meet the January 1, 1997, deadline a mere three weeks prior to that deadline -- especially when U S West anticipates an estimated completion date six months beyond the deadline -- does not indicate a persistent effort by U S West throughout the five months since the release of the Local Competition First Report and Order to effectuate all modifications necessary for compliance.

While five months may be a short timeframe within which to fulfill OSS access requirements, it is not too short a timeframe to make significant progress toward that goal. Indeed, on the same day U S West filed its Waiver Petition, NYNEX publicly presented its OSS

²³ Local Competition Second Order on Reconsideration, FCC 96-476 at ¶10.

²⁴ Id. at ¶11.

electronic system.²⁵ On January 9, 1997, Ameritech announced the availability of its OSS interface.²⁶ TRA does not contend that either NYNEX or Ameritech has fully satisfied their respective OSS obligations through these measures. Serious industry doubt surrounds many aspects of the systems, including the continued reliance on manual data entry. Despite the as-yet rudimentary nature of the efforts produced by NYNEX and Ameritech, however, one fact is indisputable. Through diligent efforts, an attempt at compliance can produce results.

In light of the Commission's clear statement that "providing access to OSS functions is a critical requirement for complying with section 251,"²⁷ TRA urges the Commission to exercise the utmost vigilance to ensure that ILECs are indeed making good faith efforts to provide OSS access in as timely a manner as possible. And to the extent an ILEC fails to meet such a standard, TRA asks the Commission to seriously consider the initiation of an enforcement action. Unless U S West can demonstrate some measurable progress toward fulfilling its OSS access obligation within a reasonable period of time, an enforcement action against U S West would be warranted. In light of the efforts already producing results by other carriers, the "reasonable time" allotted should realistically be significantly less than six months beyond the January 1, 1997, deadline. The commencement of an enforcement action would reinforce for ILECs, and all participants in the telecommunications industry, the Commission's stalwart commitment to the advancement of competition.

²⁵ Communications Daily, p. 8 (December 12, 1996).

²⁶ Communications Daily, p. 2 (January 10, 1997).

²⁷ Id.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to deny U S West's Petition for Waiver and to impose sanctions against U S West for its continued failure to undertake a good faith effort to comply with its obligation pursuant to the Local Competition First Report and Order to provide requesting telecommunications carriers with nondiscriminatory access to operations support systems.

Respectfully submitted,

**TELECOMMUNICATIONS
RESELLERS ASSOCIATION**

By: Catherine M. Hannan
Charles C. Hunter
Catherine M. Hannan
HUNTER & MOW, P.C.
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(202) 293-2500

January 10, 1997

Its Attorneys

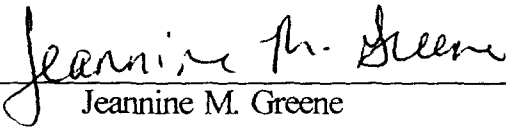
CERTIFICATE OF SERVICE

I, Jeannine M. Greene, hereby certify that I have this 10th day of January, 1997,
caused copies of the foregoing document to be mailed, postage prepaid, to the following:

Kathryn Marie Krause
U S West Communications, Inc.
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036

Ms. Janice Myles*
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

International Transcription Services, Inc.*
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037



Jeannine M. Greene

* By Hand Delivery